



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

445 12<sup>th</sup> Street, S.W.

WASHINGTON, DC 20554

News media information 202/418-0500 Fax-On Demand 202/418-2830 Internet: <http://www.fcc.gov> <ftp.fcc.gov>

**DA 09-1045**

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## **IB INVITES COMMENT FOR THIRD ANNUAL REPORT TO CONGRESS ON STATUS OF COMPETITION IN THE SATELLITE SERVICES MARKET**

**IB Docket No. 09-16**

**Comments Due: June 15, 2009**

**Reply Comments Due: June 30, 2009**

Section 4 of the Communications Satellite Act of 1962, as amended, (Com Sat Act)<sup>1</sup> requires the Commission to submit to Congress an annual report ("Satellite Competition Report") that analyzes the competitive market conditions with respect to domestic and international satellite communications services.<sup>2</sup> The Report must include:

- (1) an identification of the number and market share of competitors in domestic and international satellite markets;*
- (2) an analysis of whether there is effective competition in the market for domestic and international satellite services; and*
- (3) a list of any foreign nations in which legal or regulatory practices restrict access to the market for satellite services in such nation in a manner that undermines competition or favors a particular competitor or set of competitors.<sup>3</sup>*

The International Bureau (the Bureau) seeks comment generally on which indicators are useful for analyzing competitive market conditions in the markets for domestic and international satellite services. We request comment on what specific criteria should be used to determine whether there is *effective competition* among domestic and international satellite service providers, which is not defined in the Communications Satellite Act of 1962, as amended. Absent a statutory definition of effective competition,<sup>4</sup> the Bureau in both the First and Second Annual Satellite Competition Reports relied upon a

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<sup>1</sup> Communications Satellite Act—Amendment, Pub. L. No. 109-34, 119 Stat. 377 (2005) ("Amendment Act"). The Amendment Act amended the Communications Satellite Act of 1962, 47 U.S.C. § 701 *et seq.*

<sup>2</sup> Com Sat Act, § 4(a).

<sup>3</sup> *Id.* at § 4(b)(1)-(3).

<sup>4</sup> With respect to Commercial Mobile Radio Service ("CMRS"), neither Section 332(c) of the Act nor its legislative history defines effective competition in wireless telecommunications services markets. In preparing its annual reports on competition in the commercial mobile radio services industry in the past five years, the Wireless Telecommunications Bureau has reviewed competitive market conditions using a framework that groups indicators

range of standard indicators commonly used for the assessment of effective competition.<sup>5</sup> The Commission, however, has adopted definitions of effective competition as they relate to international telecommunications markets more broadly and not specifically for satellite communications services. For example, in its 1995 *Foreign Carrier Entry Order*, the Commission stated that “[e]ffective competition means competition among service providers in a market that benefits consumers by expanding service offerings, promoting development of innovative technology, and lowering prices.”<sup>6</sup>

The Bureau invites comment on whether the Commission should continue to consider a range of indicators of competition in determining whether effective competition prevails in domestic and international satellite services markets as implemented in both the First and Second Annual Satellite Competition Reports or should the Commission adopt a specific definition of effective competition for the satellite services industry that acknowledges the particular economic attributes of these domestic and international markets.<sup>7</sup> If a specific definition of effective competition for the satellite services industry is proposed, it is noted that the concept of competition in general is defined in different ways in the economics literature and that any proposed definition of effective competition for the satellite services industry should relate to a particular concept of competition as found in such literature.<sup>8</sup> For example, some conceptions of competition tend to emphasize certain elements of market *structure*, such as the number of sellers supplying the market, barriers to entry, extent of product differentiation, and the cost structure of firms. Other conceptions of competition tend to emphasize the *behavior* or *conduct* of both sellers and buyers, especially the incentive and ability of either buyers or sellers to influence market price.<sup>9</sup> Focal points of competitive behavior other than price may also be relevant to a definition of effective competition in satellite communications services, such as rivalry focused on product or service quality or innovation.<sup>10</sup>

In general, we invite comment on the relevance of such factors as market structure, buyer and seller conduct, and the relative importance of price and quality as focal points of competitive rivalry in proposing a definition of effective competition for the satellite services industry. Industry members,

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into four categories, namely, (1) market structure; (2) provider conduct; (3) consumer behavior; and (4) market performance. Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Eleventh Report*, WT Docket No. 06-17, 21 FCC Rcd 10947, 10950, para. 1 (2006).

<sup>5</sup> Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services, *First Report*, 22 FCC Rcd 5954, 5956, para. 7 (2007) (“*First Satellite Report*”); Second Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services, *Second Report*, 23 FCC Rcd 15170, 15174-75, para. 7 (2008) (“*Second Satellite Report*”). These factors include HHIs, profit-to-sales ratios, the Lerner Index, and consumer-oriented metrics, including churn and ARPU. *First Satellite Report*, paras. 160-66.

<sup>6</sup> Market Entry and Regulation of Foreign-Affiliated Entities, *Report and Order*, 11 FCC Rcd 3873, para. 1 (1995).

<sup>7</sup> See *First Competition Report*, 22 FCC Rcd at 5956, para. 7; *Second Competition Report*, 23 FCC Rcd at 15174-75, para. 7. Such attributes would include, among others, the conditions of market entry; industry cost structure dominated by pervasive fixed and sunk costs; the intrinsic dynamics of market demand; and persistent excess capacity.

<sup>8</sup> See, for example, Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization* 85-86 (4<sup>th</sup> International ed., Addison-Wesley 2005). A more extensive discussion is provided by John Vickers, “Concepts of Competition,” *Oxford Economic Papers* 47 (1995):1-23.

<sup>9</sup> An historical perspective on the emphasis of structural versus conduct elements of competition is provided by F. M. Scherer and David Ross, *Industrial Market Structure and Economic Performance* 15-18 (3<sup>rd</sup> ed., Houghton Mifflin 1990).

<sup>10</sup> A detailed study on the theory and empirical analysis of competition focused on improving product quality is provided by John Sutton, *Sunk Costs and Market Structure* (MIT Press 1996).

members of the public, and other interested parties should provide information, comments, and analyses regarding competition in the provision of satellite services. To facilitate an analysis of competitive trends over time, parties should provide current data as well as historic data that are comparable over time. Commenters desiring confidential treatment of their submissions should request that their submission, or a specific part thereof, be withheld from public inspection.<sup>11</sup>

The accuracy and usefulness of the Report and its findings are related directly to the quality of the data and information we receive from commenters. For previous Reports, we relied upon data from publicly-available sources where information was not provided directly by industry participants, and we will do so again to the extent necessary. Nevertheless, we are concerned that such publicly-available data may not be adequate to gain a full understanding of the state of competition in the market for satellite services. Accordingly, we urge commenters to provide us, to the extent possible, with complete and accurate information directly from industry sources, as well as from non-industry sources.

In particular, the Bureau seeks both qualitative and quantitative data pertaining to indicators in the following three categories: (1) market structure; (2) market conduct; and (3) market performance. The Bureau also seeks comment on what indicators are likely most useful for analyzing competitive market conditions with respect to domestic and international satellite services, and what specific criteria should be used to determine whether there is effective competition in the relevant markets. Finally, the Bureau seeks comments with respect to any foreign nations where legal or regulatory practices restrict access to the market for satellite services in such nation in a manner that undermines competition or favors a particular competitor or set of competitors.

## **I. Market Structure**

The Bureau's analysis of market structure will examine the degree of market concentration and the ease of entry and exit from satellite communication services markets as follows: (1) *Domestic Wholesale*, including (a) Capacity for Video Contribution, (b) Capacity for Video Distribution, (c) Network Services, and (d) Mobile Satellite Services (MSS);<sup>12</sup> (2) *Domestic Retail*, including (a) Fixed Satellite Broadband Services, (b) Satellite Digital Audio Radio (SDARS), and (c) MSS; (3) *International Wholesale Services*, including (a) Capacity for Video Contribution, (b) Capacity for Video Distribution, (c) Network Services, and (d) MSS and (4) *International Retail Service*, specifically, MSS. As in the First and Second Reports, we do not anticipate considering in the Third Report those satellite-based Multichannel Video Programming Distribution (MVPD) markets, as competition in those markets is currently addressed in a separate Annual Report to Congress.

The Bureau invites comment generally on both the market groups proposed for analysis and the current concentration and the ease of entry and exit for each of these satellite services market groups. We also invite comments on the redefinition or repositioning of satellite-based services reflecting convergence of services within the satellite sector such as to affect overall competitiveness or industry trends.

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<sup>11</sup> 47 C.F.R. § 0.459.

<sup>12</sup> To the extent that MSS or other satellite providers offer commercial mobile radio services (CMRS) and are part of the CMRS marketplace, discussion of these providers and their services will continue to be included in the Commission's analysis of competitive market conditions with respect to CMRS in the Commission's Annual CMRS Competition Report. See the Commission's Fourteenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 09-66, *Public Notice*, DA 09-1070 (WTB, released May 14, 2009). See also 47 C.F.R. § 20.9(a)(10).

### **A. Market Participants**

The Bureau seeks information on the number of firms in each relevant product and geographic market, and an identification and description of services provided in each market. We also seek information concerning the types and number of buyers of services (including both number of firms and number of subscribers) in each product and geographic market.

### **B. Horizontal Concentration**

The Bureau seeks information concerning U.S. sales revenues by product for the reporting period. For wholesale providers, we seek data on satellite capacity (number of available transponders, number of transponders used or other capacity measures) by participants in each wholesale product and geographic market. For retail providers, the Bureau also seeks information on market shares based on the number of subscribers or customers served by each market participant (firms). Are there any other reasonable measures of market shares, and if so, what are they?

### **C. Market Entry Conditions**

The Bureau invites comment on market entry conditions in each product and geographic market. Specifically, the Bureau seeks information on cost structures in each relevant market, especially information on the presence of large sunk costs that would influence the ease of market entry and exit.

The Bureau also invites comments on barriers to entry, or, more generally, the costs of market entry, in the relevant satellite communications services markets. Barriers to entry may include, but are not limited to, first-mover advantages, spectrum allocation, and the allocation of orbital locations, as well as effects of regulation and policies of governments. The Bureau seeks information on these and other types of barriers to entry or entry costs in all relevant satellite communications services markets. What are the most significant costs to entry or barriers to entry today in the satellite communications services industry?

The Bureau invites comment on whether there is access to sufficient spectrum, through Commission spectrum allocation, to prevent spectrum from becoming a significant barrier to entry in the satellite communications services industry. Are existing service providers spectrum-constrained? If so, in which geographic markets are firms most likely to be constrained? Have these service providers become more spectrum-constrained after rolling out advanced services like high-speed Internet access and High Definition Digital Television? Do potential entrants have sufficient opportunities to access spectrum and orbital locations? Are there other barriers that limit access to spectrum?

### **D. Market Consolidation, Corporate Reorganization and Corporate Financing**

The Bureau invites comment on the effects of market consolidation and corporate reorganization on the satellite services industry. Are the effects of consolidation different for mergers and acquisitions, swaps, joint ventures, private equity investments, and bankruptcies? Has consolidation or corporate reorganization affected some market groups differently than others? How has consolidation affected innovation or consumer choice in products offered? Has consolidation affected rural areas differently than urban areas? What have been the effects on competition in the communications satellite industry, if any, of using private equity funding to finance mergers and acquisitions of satellite system operators?

## **II. Market Conduct**

### **A. Price Rivalry**

The Bureau seeks information on U.S. pricing plans for satellite communications services, including for wholesale products, price per transponder or portion thereof (transponder lease rates or satellite capacity sales prices) or price per megabit of transmission capacity, and for retail markets, for varying tiers of services offered in regions throughout the U.S. What distinct characteristics, if any, affect the pricing practices observed in the satellite services industry? To what extent do pricing plans reflect price rivalry among firms, both among satellite-based companies and among differing technology platforms? In addition, the Bureau invites comment on the extent to which satellite firms in their pricing plans differentiate between different types of satellite communications services. Do satellite firms offer short-term or long-term pricing plans? To what extent is transponder pricing determined by bilateral negotiations between satellite service providers and their customers? To what extent do retail satellite services respond to pricing changes in alternative terrestrial services?

### **B. Non-Price Rivalry**

The Bureau seeks information regarding any non-price rivalry among satellite firms, especially competition based on quality differences. To what extent do communications satellite operators invest in research and development to gain competitive advantage or compete by improving service quality? To what extent is the level of capital expenditures by satellite firms affected by service innovation? Which service innovations have satellite firms focused their investment or marketing strategies? Have capital expenditures by satellite firms increased (decreased) in last five years? How important is capacity expansion to communications satellite operators as a competitive strategy? Are there any studies or analyst reports on the nature and extent of capital expenditures of domestic versus international satellite firms? How have satellite firms changed their marketing strategies in last five years to respond to competitors within the satellite sector or other technology competitors?

### **C. Consumer Behavior**

The Bureau invites comment on the development of consumer information sources for satellite communications services. Are there new avenues for consumers to gain information, such as retailers providing on-line and in-store comparisons of pricing plans, services, and equipment? How often do consumers/buyers switch firms providing satellite communications services (i.e., what is the level of “churn” in the various relevant markets and is it increasing or decreasing)? If there is significant churn/switching by consumers/buyers, is this in response to price differences, coverage, and/or quality of service differences? To what extent do consumers compare satellite-based services with other non-satellite-based services? To what extent can buyers of wholesale satellite services exercise buyer power in communications satellite service markets? What is the extent and effect of aggregators on the price and other terms and conditions of wholesale communications satellite services?

## **III. Market Performance**

The Bureau seeks information for the analysis of various market performance metrics, including pricing levels and trends, subscriber growth and penetration, innovation and diffusion of services, and quality of service. Specifically, the Bureau seeks 5-year time-series data on U.S. revenues for each relevant market group, firm profitability, cash flows, and cash-flow margins for the relevant satellite communications services markets.

Are there any other quantitative or qualitative metrics that would add significantly to the Bureau's analysis of market performance? Are these metrics available on a national or international level, and are they available for a 5-year time period?

#### **IV. Access To Foreign Markets**

The Bureau also seeks information on the legal or regulatory practices of foreign nations which have the effect of restricting access to that nation's market for satellite services. What types of legal or regulatory practices hinder U.S. firms from fully participating in a given foreign market? Are there foreign legal or regulatory practices that favor a particular competitor or set of competitors? Are there activities by U.S. government agencies, including the U.S. Trade Representative, that have affected market entry for satellite firms into foreign markets?

#### **V. Procedural Matters**

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

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For further information, contact Jerry Duvall, [jerry.duvall@fcc.gov](mailto:jerry.duvall@fcc.gov), or Jennifer Gilsenan, [jennifer.gilsenan@fcc.gov](mailto:jennifer.gilsenan@fcc.gov), International Bureau.